

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Arcom Communications)	File No.: EB-05-SJ-005
Owner of Antenna Structure # 1249670)	NAL/Acct. No. 200532680005
St. Croix, United States Virgin Islands)	FRN 0010760965

MEMORANDUM OPINION AND ORDER

Adopted: August 3, 2006

Released: August 9, 2006

By the Chief, Enforcement Bureau:

1. In this *Memorandum Opinion and Order* (“*Order*”), we deny a Petition for Reconsideration (“*Petition*”) filed on January 20, 2006, by Arcom Communications (“*Arcom*”) of a *Forfeiture Order* issued December 21, 2005.¹ The *Forfeiture Order* imposed a monetary forfeiture in the amount of two thousand four hundred dollars (\$2,400) to Arcom for the willful and repeated violation of Section 17.4(a) of the Commission’s Rules (“*Rules*”),² specifically Arcom’s failure to register its antenna structure.

2. In its Petition, Arcom makes four main arguments. First, Arcom argues that the forfeiture is barred by the statute of limitations. Second, Arcom argues that the violation was a “good faith misunderstanding of the Commission’s confusing tower registration requirements.” Third, Arcom argues that the Commission is equitably estopped from proceeding with the forfeiture because of the Commission agent’s failure to discover Arcom’s violation when it first observed the tower under construction. Finally, Arcom argues that the Commission’s refusal to grant an evidentiary hearing deprives Arcom of due process.

3. Each of Arcom’s arguments in its Petition was raised previously by Arcom in its response to the *Notice of Apparent Liability* (“*NAL*”)³ and each was addressed in the *Forfeiture Order*⁴ and need not be repeated at length here. With respect to the statute of limitation, we found that Arcom’s initial violation on May 5, 2004 was not a “one-time violation that can not be repeated” as Arcom contends, but rather continued until the violation was corrected by Arcom’s registration of the tower on August 10, 2005.⁵ Thus, issuance of the *NAL* on August 17, 2005 occurred well within the limitations period. In response to Arcom’s second argument that the tower registration requirements are confusing, we found in the *Forfeiture Order* that both the Commission’s TOWAIR database and the Rules clearly required registration of Arcom’s tower.⁶ Thirdly, we disagreed with Arcom’s interpretation of the facts and

¹ *Arcom Communications*, Forfeiture Order, DA 05-3222 (Enf. Bur. December 21, 2005) (“*Forfeiture Order*”).

² 47 C.F.R. § 17.4(a).

³ NAL/Acct. No. 200532680005 (Enf. Bur., San Juan Office, August 17, 2005). Arcom submitted a written response on September 15, 2005.

⁴ *Forfeiture Order*, at ¶¶ 6-14.

⁵ *Forfeiture Order*, at ¶ 8.

⁶ *Forfeiture Order*, at ¶ 9.

assertion that the Commission is estopped from proceeding with the forfeiture. As we explained in the *Forfeiture Order*, when the agent first observed the tower's preliminary foundation construction on May 5, 2004, he had no reason to believe a violation had occurred and had no information regarding ownership of the structure. After receiving a complaint in February 2005, the agent investigated and discovered the registration violation. There is nothing in the agent's actions to bar Commission enforcement action.⁷ Finally, in response to Arcom's request of a full evidentiary hearing, we determined no evidentiary hearing is required in this case involving only a monetary forfeiture and where Arcom received notice of the bases for the violation and proposed forfeiture via the *NAL*.⁸

4. Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.⁹ A petition for reconsideration that reiterates arguments that were previously considered and rejected will be denied.¹⁰ Because Arcom raises no new arguments or facts that have not been previously considered and rejected in the *Forfeiture Order*, we dismiss its Petition.

ORDERING CLAUSES

5. Accordingly, IT IS ORDERED that, pursuant to Section 405 of the Communications Act of 1934, as amended,¹¹ and Section 1.106 of the Commission's Rules,¹² Arcom Communications' Petition for Reconsideration of the December 21, 2005 *Forfeiture Order* IS hereby DENIED.

6. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹³ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under an installment plan should be sent to: Associate Managing Director, Financial Operations, 445 12th Street, S.W., Room 1A625, Washington, D.C. 20554.¹⁴

⁷ *Forfeiture Order*, at ¶ 10.

⁸ *Forfeiture Order*, at ¶ 11.

⁹ See 47 C.F.R. § 1.106(c); *EZ Sacramento, Inc.*, 15 FCC Rcd 18257, ¶ 2 (EB 2000), citing *WWIZ, Inc.*, 37 FCC 685, 686 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

¹⁰ *EZ Sacramento, Inc.*, 15 FCC Rcd at 18257, ¶ 2.

¹¹ 47 U.S.C. § 405.

¹² 47 C.F.R. § 1.106.

¹³ 47 U.S.C. § 504(a).

¹⁴ See 47 C.F.R. § 1.1914.

7. IT IS FURTHER ORDERED that this *Order* shall be sent by First Class and Certified Mail, Return Receipt Requested, to Arcom Communications at its address of record and to its attorney, Matthew J. Plache, Catalano & Plache, PLLC, 1054 31st Street, NW, Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Chief, Enforcement Bureau